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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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03/26/2004

John R. Mitchell

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EXAMINER

BRANDT, ADAM CURTIS

ART UNIT

PAPER NUMBER

3771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

12/28/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/708,808	Applicant(s) MITCHELL, JOHN R.	
	Examiner Adam Brandt	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/13/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-13 and 19-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6,8,11-13 and 19-22 is/are rejected.
- 7) ☒ Claim(s) 3-5,9 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 November 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/13/2006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. This office acknowledges receipt of the following items from the applicant: Information Disclosure Statement (IDS) filed 11/13/2006. The references cited on the PTO 1449 form have been considered.

Drawings

2. The drawings were received on 11/9/2006. These drawings are objected to because the figures are not numbered according to the specification. Figure 4 is mislabeled as figure 5 and figure 5 is mislabeled as figure 4. Appropriate action is required.

Specification

3. The disclosure is objected to because of the following informalities: Paragraphs 0018 and 0019 misrepresent figures 4 and 5. It appears that the figures have been mislabeled. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 19 recites the limitation "wherein said single piece inner foot cradling insole member" in line 4 of page 9. There is insufficient antecedent basis for this limitation in the

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claim. An insole for a first shoe has been disclosed. An insole for the second shoe has not been introduced prior to line 4 of page 9.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1, 2, 6, and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craig (2,906,261) in view of Potts (6,094,844).

Craig discloses a system for maintaining a child's feet in a predetermined therapeutic arrangement, the system comprising a splint comprising a rigid elongated member (14;44) comprising a left end and a right end;

a right shoe engaging plate (18) adjustably coupled to said elongated member (via attachment pin 50 and attachment pin 50);

a left shoe engaging plate (18) adjustably coupled to said elongated member (via attachment pin 50 and attachment pin 50);

a right end adjustment mechanism (28 and 40 as attached by pin 36; hole 46 and hole 48 as attached by pin 50) disposed between said right shoe engaging plate and said elongated member, said right end adjustment mechanism for making angular adjustments (see figure 5);

a left end adjustment mechanism (28 and 40 as attached by pin 36; hole 46 and hole 48 as attached by pin 50) disposed between said left shoe engaging plate and said elongated member, said left end adjustment mechanism for making angular adjustments (see figure 5);

a right quick release mechanism coupled to said right shoe engaging plate (20; column 2, lines 48-50);

a left quick release mechanism coupled to left shoe engaging plate (20; column 2, lines 48-50);

a right shoe (12) detachably coupled to said right quick release mechanism;

a left shoe (10) detachably coupled to said right quick release mechanism;

a left recess disposed inside of a left sole of the left shoe (24), wherein the left recess is configured to receive and selectively latch therein said left quick release mechanism; and,

a right recess disposed inside of a right sole of the right shoe (24), wherein the right recess is configured to receive and selectively latch therein said left quick release mechanism.

Craig fails to disclose that the shoe's sole are a single piece of molded material. Potts teaches that it is well known in the art to make a shoe molded out from a single piece (column 3, lines 47-53, presents an example using a single layer sole) with a slot (30) for inserting objects and securely latching the inserted item (44 and 46). Therefore, it would have been obvious to

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one of ordinary skill in the art at the time the invention was made to produce the sole of the shoe used in Craig's splint with only one layer as taught by Potts in order simplify the production and reduce the cost of producing a shoe with integral slots in the sole.

In regard to claim 2, Craig discloses in figure 1 a sole that has a heel (portion closest to the heel of the foot of the user), toe (closest to the toes of the user) and bottom portion (portion in contact with the floor).

In regard to claim 6, Craig fails to disclose a quick release mechanism that has a button to release the attachment when pressed in a direction toward said sole and an interior portion of said right shoe. Potts teaches that it is well known to have a quick release button and to activate quick release button the user must press the tab towards to the sole of the shoe (column 4, lines 31-34). Therefore, it would have been obvious to one of ordinary skill in the art to modify the quick release mechanism of Craig to have a button as taught by Potts in order to more quickly release the shoe from the splint.

In regard to claims 20-22, the method steps would have been obvious to one of ordinary skill in the art because they would have resulted from the use of the device of Craig modified by Potts as in claim 6 above.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Craig (2,906,261) in view of Hall et al. (2004/0244221 A1).

Craig discloses a system for maintaining a child's feet in a predetermined therapeutic arrangement, the system comprising a splint comprising:

a rigid elongated member comprising a left end and a right end (14;44);

a shoe engaging plate adjustably coupled to said elongated member at each of said left end and said right end (18);

a right end adjustment mechanism disposed between said shoe and shoe engaging plate and said right end of said elongated member, said right end adjustment mechanism for making angular adjustments (28 and 40 as attached by pin 36; hole 46 and hole 48 as attached by pin 50);

a left end adjustment mechanism disposed between said shoe engaging plate and said left end of said elongated member, said left end adjustment mechanism for making angular adjustments(28 and 40 as attached by pin 36; hole 46 and hole 48 as attached by pin 50);

a shoe coupled to each of said shoe engaging plate (10;12);

Craig fails to disclose a shoe comprising a single piece removable inner foot heel cradling insole insert, which is sized, shaped and configured to provide full heel support; and wherein said single piece inner foot and heel cradling insole insert has a relatively flat insole sole foot side and a pair of opposing insole side walls and an insole heel and ankle support section. Hall et al. teaches that it is well known in the art to provide an insert that cradles the heel to provide comfort and support to the ankle (paragraph 0007, line 3 and figure 2) while providing supporting side walls (walls extending from sole of insert) and a relatively flat bottom surface (figure 4; 170; 160). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modified the system of Craig with the heel cradle and ankle

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support as taught by Hall et al. in order to provide a more secure fitting around the foot of the wearer.

10. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craig in view of Hall et al. and Potts.

Craig discloses a system for maintaining a child's feet in a predetermined therapeutic arrangement, the system comprising a splint comprising:

a rigid elongated member comprising a left end and a right end (14;44);

a shoe engaging plate adjustably coupled to said elongated member at each of said left end and said right end (18);

a right end adjustment mechanism disposed between said shoe and shoe engaging plate and said right end of said elongated member, said right end adjustment mechanism for making angular adjustments (28 and 40 as attached by pin 36; hole 46 and hole 48 as attached by pin 50);

a left end adjustment mechanism disposed between said shoe engaging plate and said left end of said elongated member, said left end adjustment mechanism for making angular adjustments(28 and 40 as attached by pin 36; hole 46 and hole 48 as attached by pin 50);

Craig fails to disclose a shoe comprising a single piece removable inner foot and heel cradling insole insert, which is sized, shaped and configured to provide full heel support. Hall et al. teaches which provides an insole insert which cushions the foot and provides ankle support (paragraph 0007). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Craig with the heel cradle and ankle

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support as taught by Hall et al. in order to provide a more secure fitting around the foot of the wearer.

Craig fails to disclose a shoe that has disposed in a single piece of molded material a structure for mating with said shoe engaging plate. Potts teaches that it is well known in the art to make a shoe molded out from a single piece (column 3, lines 47-53, presents an example using a single layer sole) with a slot (30) for inserting objects and securely latching the inserted item (44 and 46). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sole in the system of Craig with only one layer as taught by Potts in order simplify the production and reduce the cost of producing a shoe with integral slots in the sole.

In regard to claim 12, Craig fails to disclose a quick release mechanism that has a button to release the attachment when pressed in a direction toward said sole and an interior portion of said right shoe. Potts teaches that it is well known to have a quick release button and to activate quick release button the user must press the tab towards to the sole of the shoe (column 4, lines 31-34). Therefore, it would have been obvious to one of ordinary skill in the art to modify the quick release mechanism of Craig to have a button as taught by Potts in order to more quickly release the shoe from the splint.

In regard to claim 13, Craig discloses a right end adjustment mechanism with a first threaded means (36) for pivoting a bar (28) around an axis; and a second threaded means, which is not symmetrical about said axis, said second threaded means (50) for fixing an angular

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adjustment at a discrete predetermined arrangement (discrete arrangement could have bar 44 placed perpendicular to slot 42, in addition to any user specific configuration).

Allowable Subject Matter

11. Claims 3, 4, 5, 9, and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claim 19 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

13. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 11/13/2006 have prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Brandt whose telephone number is 571-272-7199. The examiner can normally be reached on 8:30 AM to 4:30 PM; Mon thru Fri.

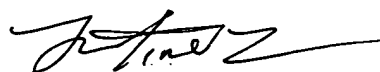
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ACB 



Adam Brandt
Examiner
Art Unit 3771



JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

12/21/06